

August 3, 1999

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **L97P0051**

**CIMARRON GLEN**  
Preliminary Plat Application

Location: East of 228<sup>th</sup> Avenue NE; North of NE 8<sup>th</sup> Street

Applicant: West Pacific Properties, *represented by* **Grant Gillies**  
550 Kirkland Way, Suite 200  
Kirkland, WA 98033  
Telephone: (425) 739-2007; Fax: (425) 739-2212

Appellants: Jeff Stone, Maria Gaddis, Eric Johnstone, et al, *represented*  
*by* **Jeff Stone**,  
1026 – 231<sup>st</sup> Place NE  
Redmond, WA 98053  
Telephone: (425) 836-5396

Department: Development and Environmental Services, Land Use Services  
Division, *represented by* **Lance Moreno**  
900 Oakesdale Avenue SW  
Renton, WA 98055  
Telephone: (206) 296-7182; Fax: (206) 296-7051

**SUMMARY OF RECOMMENDATIONS:**

Department's Preliminary:	Approve, subject to conditions
Department's Final:	Approve, subject to conditions
Examiner:	Approve, subject to conditions

PRELIMINARY MATTERS:

Application submitted:	November 19, 1997
Notice of complete application:	December 17, 1997

EXAMINER PROCEEDINGS:

Hearing Opened:	July 23, 1999
Hearing Closed:	July 23, 1999

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

SUMMARY:

Preliminary plat approval as proposed with twenty lots on 2.45 acres.

ISSUES AND TOPICS ADDRESSED:

- Density (subdivision)
- Traffic
- Recreation areas
- Open space
- Aquifers

FINDINGS, CONCLUSIONS, AND DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **General Information.**

Owner/Developer:	West Pacific Properties 550 Kirkland Way, #200 Kirkland, WA 98033 Contact: Grant Gilles
Engineer:	The McAndrews Group, Ltd. 11555 Northup Way, #100 Bellevue, WA 98004
Location:	East of 228 <sup>th</sup> Avenue NE; North of NE 8 <sup>th</sup> Street
STR:	SW 27-25-06

Zoning:	R-8
Acreage:	2.45 acres
Number of Lots:	20
Density:	8 dwelling units per acre
Lot Size:	Ranges from approximately 3,600 to 5,700 square feet in area
Proposed Use:	Single family residential detached housing
Sewage Disposal:	Sammamish Plateau Water and Sewer District
Water Supply:	Sammamish Plateau Water and Sewer District
Fire District:	Number 10
School District:	Lake Washington School District
Complete Application Date:	December 17, 1997

2. **Proposal.** West Pacific Properties (the "Applicant") proposes to subdivide a 2.45 acre parcel into 20 single family residential building lots. The proposed development, located on the Sammamish Plateau in the vicinity of the 228<sup>th</sup> Avenue NE/NE 8<sup>th</sup> Street intersection seeks a density of 8 dwelling units per acre. This density would be accomplished by establishing lots ranging from approximately 3,600 to 5,700 square feet. Such a density requires establishment of several joint access tracts in lieu of public streets. The preliminary plat drawing illustrates the proposal and is contained in this hearing record as Exhibit No. 7. See also Attachment No. 1 of the Department of Development and Environmental Services ("DDES" or the "Department") Preliminary Report to the Examiner (Exhibit No. 2).

3. **State Environmental Policy Act (SEPA).** On May 2, 1999 the Department issued a Mitigated Threshold Determination of Non-significance. That is, the Department issued its determination that the proposed development would not create a significant adverse impact on the environment if a certain mitigating condition was implemented. That mitigating condition required the Applicant to pay the Washington State Department of Transportation \$1,378 per building lot.

Several property owners in the vicinity of the subject property subsequently filed an appeal from the MDNS--Maria and David Gaddis, Sue and Jeff Stone, Anita and Eric Johnstone, Maureen and Greg Bischuk and David Laskowski, Rob Quinn, Cheri and Mike Harris and Weiqi and Mingqi Li. Although a pre-hearing conference was conducted on that appeal, none of the constituents of that appeal appeared at the public hearing except Mr. and Mrs. Li. Mr. Li spoke to general issues regarding the subdivision, particularly local construction impacts and Sammamish Plateau traffic/infrastructure stress. However, he did not specifically represent or argue the SEPA appeal.

No other appeals were filed by any person, agency, tribe or other entity.

4. **Department Recommendation.** The Department recommends granting preliminary approval to the proposed plat of Cimarron Glen, *subject* to the 16 conditions of final plat approval stated on pages 8 through 12 of the Department's Preliminary Report (Exhibit No. 2); *and subject further* to the additional drainage condition 7j contained in this hearing record as Exhibit No. 16, repeated as Condition 7j on page 7 of this Report and Decision.

5. **Applicant's Response.** The Applicant accepts the Department's recommendation as described in Finding No. 4 preceding, *except* for recommended Condition No. 12. That recommended condition addresses "suitable recreation space" and is addressed further in Finding No. 6, below.
6. **Suitable Recreation Space.** In recommended Condition No. 12, the Department recommends that suitable recreation space be required consistent with KCC 21A.14.180 and KCC 21A.14.190, which establish standards for suitable recreation space and the installation of recreational or leisure equipment within required recreation space.

The Applicant objects to the recommended Condition No. 12 lack of opportunity to pay a fee-in-lieu of required open space. The Applicant would prefer to pay the fee because the amount would be substantially less than the loss that would result from deleting a building lot in order to accommodate the recreation space standard. The Applicant fears that loss of a building lot may threaten the financial viability of the project. The hearing record contains no evidence regarding this concern, however.

The Applicant argues that earlier discussions with the Parks Department led project proponents to believe that the fee-in-lieu option would be acceptable. Noting that the Department's report indicates "no response" from the Department of Parks and Recreation, the Applicant argues that the Department of Parks and Recreation has no strong interest in the outcome of this debate. The Applicant proposes to use a sand filter area (required by drainage standards) to provide 1,100 square feet of the 7,800 square feet required. In addition, the Applicant suggests that a narrow strip along the proposed internal cul-de-sac street may satisfy some of the recreational space requirement.

The Department accepts in concept the use of a grassy sand filtration area as recreational space. However, the Department expresses doubt regarding both the feasibility and utility of the suggested narrow strip of recreational space along the internal cul-de-sac street. The Department notes that such a strip may not be located within any private lot area nor may it be located within public right of way. The Department, as well as a neighboring property owner, observe that the nearest park is 2 miles west of the proposed development and, worse, is not located on the Sammamish Plateau. Thus, it is "unreachable" by pedestrian or bicycle due to arterial crossings and absence of County standard walkways of bike paths.

7. **Community Concerns.** Three neighboring property owners expressed concerns regarding the proposed development. Sunny Wallace expressed concern that drainage from the proposed development will damage the "Llama Landing" wetland located south of the subject property. She also expressed concern that this development, cumulatively in conjunction with other Sammamish Plateau developments, will deplete and destroy the Sammamish Plateau aquifer. Mingqi Li, as indicated in Finding No. 3, above, expressed concern regarding adequacy of transportation and other infrastructure upon the Sammamish Plateau, as well as construction impacts from this project and several projects in the NE 8<sup>th</sup>/228<sup>th</sup> NE intersection vicinity. Also, Vicki Baggette testified in support of the Department's desire to obtain recreational space within the subdivision, arguing that the neighborhood lacks sufficient recreational area and that children are turning to the shopping mall for recreational space. She also challenged the Applicant's suggestion that the private tract access streets could be used as "courtyards" for recreation.

- a. **Traffic.** As noted in Finding No. 3, above, the Applicant will be required to pay \$1,378 per lot for Washington State Department of Transportation projects in the area, most notably SR202. The Department's recommendation further requires that all construction and upgrading of public and private roads shall be done in accordance with current King County Road Standards; that the on-site road (231<sup>st</sup> Place NE) shall be improved to full width urban sub-access standards with a sidewalk along the east side of that road; that a portion of 231<sup>st</sup> Place NE shall be improved to County standard, including curb/gutter/sidewalk; and, that a variety of other conditions regarding street design must be satisfied. Further, King County will require the Applicant (or subsequent owner) to comply with the "Mitigation Payment System" (MPS) which requires a per-lot fee payment to address several traffic flow improvement projects on the Sammamish Plateau.
  - b. **Drainage.** The proposed development will not drain to the Llama Landing wetland. All drainage plans and analysis must comply with the 1998 Surface Water Design Manual, including erosion and sedimentation control standards. The release rates for the detention facility will be based on the land naturally draining from the site in all directions, using the KCRTS Level One Flow Control Standard. The stormwater detention facility volume will be based on all flows directed to the facility *at full development*. In addition, there must be a volumetric safety factor of between 10 to 20 percent. In order to meet the phosphorous control standards for Lake Sammamish, the project is required to provide a design-approved sand filter system comprising approximately 1,100 square feet.
8. **Department Report Adopted.** The Department's Preliminary Report (Exhibit No. 2) is accurate. It is adopted and entered here by this reference. Copies of the Department's report will be appended to those copies of this Report and Decision that are forwarded to the Metropolitan King County Council.
  9. **Conclusions Adopted.** Any portion of the following conclusions that may be construed as a finding is hereby adopted as such.

#### CONCLUSIONS:

1. Any portion of the above findings that may be construed as a conclusion is hereby adopted as such.
2. The Gaddis, Stone et al SEPA appeal will be dismissed for failure to appear. Even if Mr. Li's attendance were regarded as legal appearance, the SEPA appeal would be nonetheless dismissed or denied for failure to enter either testimony or evidence which satisfactorily carried the Appellant's burden of proof. The hearing record contains no evidence that the Department erred in procedure or substantive content in its review conducted pursuant to the State Environmental Policy Act.

3. KCC 21.14.180 requires that the subject plat provide 390 square feet of on-site recreation space for each proposed building lot. As an alternative, KCC 21A.14.185 permits a development applicant to pay a fee-in-lieu of providing on-site recreation space if, "*...the recreation space provided within a County park in the vicinity will be of greater benefit to the prospective residents of the development...*".

The hearing record contains no evidence that the criteria for permitting fee-in-lieu of actual recreational space will be satisfied. On the contrary, instead of showing "greater benefit" from a vicinity public park, the hearing record shows that the nearest park is nearly inaccessible by pedestrians or bicyclists, that it is over 2 miles away and that it requires crossing 228<sup>th</sup> Avenue SE, a collector arterial. Plain and simple, the proposed development does not meet the standard which allows fee-in-lieu payment.

4. KCC 21A.14.190 requires that recreation facilities be provided except where public facilities are less than one-quarter mile from the development and are accessible without crossing an arterial road. These conclusions do not further address KCC 21A.14.190 because the hearing record contains no argument regarding the provision of recreation facilities (such as children's play equipment, picnic tables, etc.). Rather, the hearing debate focused upon KCC 21A.14.180 that requires *recreation area*.
5. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, Subdivision and Zoning Codes, and other official land use controls and policies of King County.
6. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for open spaces, for drainage ways, streets, other public ways, transit stops, potable water supply, sanitary wastes, parks and recreations, playgrounds, schools and school grounds, and safe walking conditions for students who only walk to school; and it will serve the public use and interest.
7. The conditions for final plat approval recommended below are in the public interest and are reasonable requirements to mitigate the impacts of this development upon the environment.
8. The dedications of land or easements within and adjacent to the proposed plat, as recommended by the conditions for final plat approval or as shown on the proposed preliminary plat submitted by the applicant, are reasonable and necessary as a direct result of the development of this proposed plat.

#### SEPA DECISION:

The appeal of Gaddis, Stone, Johnstone, Bischuk, Laskowski, Quinn, Harris and Li is DISMISSED.

PROPOSED PLAT DECISION:

The proposed plat of Cimarron Glen (aka Eden's Glen) as described in Exhibit No. 7 in this hearing record is GRANTED PRELIMINARY APPROVAL *subject* to the 16 conditions of final plat approval stated on pages 8 through 12 of the DDES Preliminary Report *and subject further* to the following additional condition of final plat approval:

- 7j. Drainage plans and analysis shall comply with the approved drainage adjustment (L98V0130) dated December 15, 1998. The adjustment was approved for the diversion of storm runoff to a single facility draining to 231<sup>st</sup> Place NE and to allow conversion of surface water requirements to the 1998 drainage manual.

ORDERED this 3<sup>rd</sup> day of August, 1999.

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R. S. Titus, Deputy  
King County Hearing Examiner

TRANSMITTED this 3rd day of August, 1999, to the parties and interested persons on the attached list.

**NOTICE OF RIGHT TO APPEAL**

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) ***on or before August 16, 1999***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before August 23, 1999***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE JULY 23, 1999 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO L97P0051 – CIMARRON GLEN:

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing and representing the Department were Lance Moreno, Jim Chan and Greg Borba. Participating in the hearing and representing the Applicant were Larry McAndrews and Bill Stern. Other participants in this hearing were Vicki Baggette, Nellie Wallace and Mingqi Li.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services File No. L97P0051
- Exhibit No. 2 Department of Development and Environmental Services Preliminary Report, dated July 23, 1999.
- Exhibit No. 3 Application dated November 19, 1997
- Exhibit No. 4 Environmental Checklist dated November 10, 1997
- Exhibit No. 5 Declaration of Non-significance (mitigated), dated May 12, 1997
- Exhibit No. 6 Affidavit of Posting indicating May 7, 1999 as date of posting and May 11, 1999 as the date the affidavit was received by the Department of Development and Environmental Services.
- Exhibit No. 7 Plat Map dated January 3, 1999
- Exhibit No. 8 Land Use Map 951W
- Exhibit No. 9 Assessors Maps SW 27-25-06
- Exhibit No. 10 Level One Drainage Analysis received November 19, 1997
- Exhibit No. 11 Level One Drainage Analysis (revised) received August 28, 1998
- Exhibit No. 12 Surface Water Manual Variance Request (File No. L98V0130)
- Exhibit No. 13 Road Variance (File No. L98V0129)
- Exhibit No. 14 Seattle-King County Health Department letter, dated February 19, 1999 and corresponding map
- Exhibit No. 15 Topographic Survey received November 19, 1997
- Exhibit No. 16 Addition to Condition #7 of staff report
- Exhibit No. 17 Drainage and Grading Plan, Eden's Glen, Drawing C1.1, dated October 13, 1998
- Exhibit No. 18 King County Customer Service Bulletin #24